IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.742 OF 2006

IN

CRIMINAL APPEAL NO.602 OF 2005

Shri Gorakh Baban Kankate]	
Aged 28 years, Occ.Agriculturist]	
residing at Inamdar Vasti]	
Koregaon Mul, Tal.Haveli]	Appellant/
Dist.Pune]	Applicant/
At present in Yerowada Jail,Pune]	Org.Accd.No.1
versus	
The State of Maharashtra]	
(In C.R.No.64/2002 of Kalbhor]	Respodnent/
Police Station, Pune]	Org.Complainant

Mr.D.A.Siddiqui with Mr.J.R.Khan for the applicant.

Smt.V.R.Bhosale, APP, for the State.

Mr.M.S.Mohite for the original complainant.

CORAM : D.G.DESHPANDE

S.A.BOBDE, JJ.

DATED : AUGUST 09, 2006.

ORAL ORDER

1. Heard advocate Mr.Siddiqui for the applicant/accused and learned APP Smt.Bhosale for the State assisted by advocate Mr.Mohite for the original complainant.

2. This is an application for bail filed by original accused No.1 only. He has been convicted with others for the offences punishable under Sections 143, 147, 148, 302 r/w 149 and 34 of the Indian Penal Code and sentenced to suffer imprisonment for life and other sentences under the respective heads.

3. Advocate Mr.Siddiqui, appearing for the applicant/accused, urged that even though there are five eye witnesses and the FIR is strongly lodged in this case, it would not be proper upon the appellate Court unless there is some circumstantial evidence to support ocular evidence. He relied upon the judgment of the Supreme Court reported in **AIR 1952 SC 167 [Lachhman Singh and others vs. The State]** and

drew our attention to the following para :-

> "In the circumstances of a particular case it would be proper for an appellate Court not to rely upon the oral evidence of eye witnesses implicating particular accused unless there is some circumstantial evidence to support it. By adopting this standard the appellate Court does not condemn the oral evidence outright, but as a matter of prudence and caution it decides not to convict an accused person unless there were some circumstances to lend support to the evidence of the eye-witnesses with regard to him. The corroboration required is not that kind of corroboration which one requires in the case of an approver or an accomplice, but corroboration by some circumstances which would lend assurance to the evidence before the Court and satisfy it that particular accused persons were really concerned in the offence."

4. According to advocate Mr.Siddiqui, there

was no recovery of weapon even though the accused was arrested immediately nor his clothes were found with blood stains or any blood stained clothes were recovered at his instance. Our attention was also drawn to an admission given by a star witness i.e. the complainant from the compilation of evidence given by advocate Mr.Siddiqui i.e. Prakash alias Appa Haribhau Londhe. In para 10 of his cross examination this witness admitted that it is true that after 12 days of the incident, he moved an application to the Deputy Chief Minister and Home Minister of Maharashtra State to know as to who is master mind behind the murder of his brother and to know the actual true story.

5. From this admission, advocate Mr.Siddiqui, appearing for the applicant, contended that if Prosecution Witness Prakash Londhe was an eye witness and he has witnessed the entire incident and has deposed to about motive behind the attack and actual attach, then his writing to the Chief Minister and Home Minister for knowing the aforesaid facts creates strong doubt to his deposition in court and his being an eye witness.

6. Mr.Siddiqui for the applicant/accused also pointed out that the victim in this incident was a known criminal so also his associates including prosecution witness Prakash Londhe, and as many as 17 cases were pending against witness Prakash Londhe. All those were of serious offences of assault including offences under Sections 325, 307, 341, 302, 326, 384 etc. They were of different police stations were as not a single case was registered against the applicant/accused at any time in the past and, all or most of the witnesses of the prosecution were the co-accused along with the complainant and in this background, therefore, Mr.Siddiqui, contended that when there is no evidence to corroborate the testimony of this witness Prakash Haribhau Londhe then this was a fit case to grant bail.

7. Learned APP Mrs.Bhosale, on the other hand, tried to contend that merely because the witness had criminal antecedents was not a ground to create doubt about his testimony.

8. The argument advanced by the learned APP

may be valid when We hear the matter on merits. But so far the bail application is concerned, in our opinion, this is a fit case for bail. Because there is no corroboration to the testimony of the said witness and the witnesses viz. Arjun Kokare; Sitaram Vetal; Altaf Abdul Jabbar Shaikh, who have been named in the FIR as eye witnesses, are the co-accused in some of the cases out of the 17 cases pending against the complainant Appa alias Prakash Londhe. Therefore, this application has to be allowed. We, therefore, pass the following order :-

:ORDER:

Criminal Application No.742 of 2006 is allowed.

Applicant - original Accused No.1 be released on executing his P.R. bond of Rs.10,000/- [Rupees Ten Thousand only] with one solvent surety in the like amount.

Applicant - original Accused No.1 will mark his presence to Kalbhor Police

Station Pune once in a fortnight between 4.00 p.m. to 6.00 p.m. till the appeal is decided.

Substantive sentence of applicant - accused is suspended, pending appeal.

Fine, if any, to be paid by applicant - original accused, before his release.

Applicant - original Accused No.1 shall not try to contact any of the prosecution witnesses or will not try to influence any one of them directly or indirectly.

Criminal Application is disposed of accordingly.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]

. When we pronounced the aforesaid order, learned APP Smt.Bhosale, appearing for the State, points out that the applicant/accused is absconding since last eight months. On the other

hand learned Advocate Mr.Siddiqui, appearing for the applicant/accused states that the applicant/accused was on parole and he has surrendered and applicant/accused has signed or sent his vakalatnama through jail on 5th August 2006. The Vakalatnama was shown to us. It bears a stamp of the Senior Superintendent, Kolhapur Central Jail, Kolhapur. We, therefore, accept the statement of the learned Advocate Mr.Siddiqui for the accused. A copy of the Vakalatnama is shown to the learned APP Smt.Bhosale.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]